

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC CIVIL APPLICATION NO. 470 OF 2021**

**In the matter of the Probate and Administration of Estate Act,  
Cap. 352 [R. E. 2002]**

**AND**

**In the matter of the Estate of the Late Mashauri Abdallah  
Sangara**

**AND**

**In the matter of the Application for revocation of the  
Appointment of Dukila Mashauri as the Administratrix of the  
Estate of the Late Mashauri Abdallah Sangara by**

**MAULID MASHAURI ABDALLAH.....APPLICANT**

**AND**

**DUKILA MASHAURI.....RESPONDENT**

**(Made under Section 49 (1) (d) and Section 49 (2) of the Probate and  
Administration of Estates Act, (Cap 352 R. E. 2002)**

***Date of the Last Order: 02/09/2022***

***Date of the Ruling: 18/10//2022***

**R U L I N G**

**MGONYA, J.**

Maulid Mashauri Abdallah the Applicant herein, under certificate of extreme urgency filed a Chamber Summons under **Section 49 (1) (a) (b) (c) and Section 49 (2)** of the **Probate and Administration of Estate Act; Cap. 352 [R. E.**

**2002]** and **Rule 14(1) and (2)** of the Probate Rules for the following orders:

**Ex-parte:**

- 1) That this Honorable Court be pleased to temporary revoke the order for appointment of Dukila Mashauri as the Administratrix of estate of the late Mashauri Abdallah Sangara in **Probate Cause No. 36/1991** pending final determination of this application, and further order for removal of **DUKILA MASHAURI** as Administratrix of the said Estate and replaced by **MAULID MASHAURI ABDALLAH** as Administrator of the Estate of the late Mashauri Abdallah Sangara in **Probate Cause No. 36 of 1991.**
- 2) Costs of the Application, and
- 3) Any other relief(s) this Honourable Court deem fit to grant.

The Chamber Summons is supported by an Affidavit dully sworn by **Maulid Mashauri Abdallah**, the Applicant herein. The hearing of this application proceeded by way of written submission. The filing schedule set by the court has been adhered to accordingly, hence this Ruling.

Before I go further, I think it is important to narrate albeit brief background of this matter as herein below: It was on 05<sup>th</sup> February, 1981 when the Parties' to this application lost their

father one **Mashauri Abdallah Sangara** who died interstate at Msasani- Dar es Salaam. Maulid Mashauri Abdallah and Dukila Mashauri are among the heirs survived by the deceased. Following the death of their father, **Dukila Mashauri** was appointed as Administratrix of the estate of her father in **PROBATE AND ADMINISTRATION CAUSE NO. 36 OF 1991**. However, the said Dukila also died on 27<sup>th</sup> March 2021. Following the death of **Dukila Mashauri** the Applicant filed this application seeking for revocation of **Dukila Mashauri** as Administratrix of the late **Mashauri Abdallah Sangara**.

The Applicant submission in support of the application was prepared and filed by Mr. James Mwenda, Advocate. Mr. Mwenda prayed the court to adopt the Applicant affidavit to form part of the submission. He went on to state that, after the death of Dukila who was the Administratrix of the estate, the family members appointed and proposed the appointment of Maulid Mashauri in lieu thereof, to perform legal obligation established under the law which includes distributing the part of the estate undistributed to the heirs which includes a house located at Plot 483, Block 47 Kijitonyama Kinondoni Dar es salaam.

Mr. James contended further that, the Applicant complied with the order of this Honourable court by publishing the citation in both Government Gazette as well as on Mwananchi Newspaper which were tendered in court on 05<sup>th</sup> July, 2022. No

any interested party who lodged the caveat. Therefore, it is their prayer that, this honourable court grant the application to enable the estate of the deceased to be distributed to the heirs.

Having examined the applicant's submission and going through his affidavit, the issue for determination is whether this application is proper before this court.

Looking from the Applicant's Chamber Summons, this application has been brought under **Section 49(1)(a)(b)(c) and (2) of the Probate and Administration of Estate Act, Cap. 352 [R. E. 2002] and Rule 14(1) and (2) of the Probate Rules.** The said section provides:

***"49. Revocation of grants and removal of executors***

***1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—***

***a)that the proceedings to obtain the grant were defective in substance;***

***b)that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;***

***c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;***

***d)N/A***

***e)N/A.***

***2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the High Court may suspend or remove an executor or administrator (other than the Administrator-General or the Public Trustee) and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate”.***

The reasons to support the application has been deposed in the applicant's affidavit at paragraphs 4, 7, 8, 9 and 10, which I prefer to reproduce for a better discussion to proceed sooner after;

4. That being the beneficiary of the late Mashauri Abdallah Sangara estate, neither I nor the rest of beneficiaries' mentioned herein above was informed and or involved in anyhow of the Proceeding in Probate and Administratrix Cause No. 26 of 1991, until when One Hija Haruna Mzee and Ally Haruna Mzee, initiated the move to dispose the property of the late my father located on Plot No.483 Block 47, Kinondoni Dar es Salaam.

7. That in bid protect the interest of the property of the late our father Mashauri Abdallah Sangara and other beneficiaries, upon my application I was appointed in **Probate and Administration Cause 18 of 2017**, in the District Court of Kinondoni, as Administrator, to wit the Court revoked my appointment on the ground that there exist the appointment of one Dukila Abdallah Sangara as Administratrix on the same estate, however upon appeal the High Court quashed the proceeding of the lower Court and advised parties to institute a fresh suit to competent Court or Tribunal to determine the issue of ownership;

8. That, I could not institute a fresh case as advised by the High Court, on reason that there are alleged another Administratrix of estate of the late Mashauri Haruna Mzee.

9. That, the allegation that my sister one DUKILA MASHAURI was appointed as Administratrix of estate of the late father MASHAURI

ABDALLAH SANGARA does not contained any scintilla of truth, for failure to reproduce any documents to that effect. It must be noted further that the said DUKILA MASHAURI, also passed away on 27<sup>th</sup> March 2021 at the age of 48 years.

10. That the alleged appointment on my sister DUKILA ABDALLAH as Administratrix of Estate of our late father MASHAURI ABDALLAH SANGARA in Probate Cause No. 26 of 1991 is tainted with fraud and irregularities as follows: -

- i. At the time alleged affidavit Annexure BMA-3 was signed, the said DUKILA ABDALLAH was 11 years of age therefore incompetent to be Administrate of the estate.***
- ii. That the said Affidavit contained a forged signature of one DUKILA ABDALLAH.***

Having reproduced the Applicant's reasons, I now move to the discussion in relation to the instant application. Going through the Chamber Summons, the Applicant is seeking for an order of temporary revoke the order for appointment of DUKILA MASHAURI in **Probate Cause No. 36/1991** pending final determination of this application and further order that MAULID MASHAURI ABDALLAH to replace her.

Looking from the application itself, what the Applicant wants this court to do is **unmaintainable**. The reason for my finding is rooted on the following facts: First of all, the Applicant

is praying for temporary order to revoke the appointment of DUKILA MASHAURI pending final determination of this application. I have travelled through the filed affidavit from paragraph 1-13 there is no facts stated to indicate that there is any pending /main application of which its final determination will also determine the outcome of the temporary revocation as sought in this application.

From the affidavit in paragraph 9 the Applicant deponed that the said **DUKILA MASHAURI** passed away on 27<sup>th</sup> March, 2021. The question that bothered my mind is, under which law the order of temporary revocation of the Administratrix who is now a deceased person will be made by this court? Also going through the same paragraph 9, the Applicant sought an order for revocation of the former Administrator who was appointed in 1991, while at the same time he is disputing that there were no proof that there was another **Probate Cause No. 36/1991**, astonishing, the same person wants this court to make an order for revocation basing on the disbelieved matter. Not only that, in paragraph 7 the Applicant deponed that he was appointed as Administrator of Estate of his late father by Kinondoni District court, but the same court revoked his appointment upon being informed that there was already probate matter instituted earlier in relation to the estate of their father.



Being aggrieved with the revocation he lodged an appeal where by the High Court affirmed his revocation, on the judgment delivered on 07<sup>th</sup> June, 2019 (Annexure BMA-5). From those facts this court finds that, the Original **Probate and Administration Cause No. 36 of 1991** which appears in this application was not entertained by this court but the Applicant came to this court to seek a grant of Administration letter as a second attempt while he knows the same prayer was dealt by another court. Then the question that rings in my mind is whether this court can either revoke the grant which was not made by it or can appoint another administrator through this application while there was a probate cause of the same deceased person before another court.

It has been stated by this court that two probate, be it one probate or grant of letters of administration in respect of the same estates cannot exist. Even if the first probate was not properly filed once granted, it remains a lawful order of the court till when set aside by the competent court upon proper application. See the case of ***Godwin Amanuel Malleo and Another vs. Danford Mashauri Amanuel, Civil Application 361 of 2019.***

As to which court the revocation application or an application to be appointed to replace the former appointed administrator who died should be filed. The **Act under Section 82 of the**

**Probate and Administration Act, (Cap. 352 [R. E. 2002]** provides for the appointment made by the District Court that the same court upon any reason which justify the revocation may revoke the appointment. Also in the case of ***ZAINABU K. ATHUMAN VS. IBRAHIM ATHUMAN MWINYIGOHA***, PC, **Civil Appeal No. 131 of 2020**, this court had this to say:

***"It is the court that granted the letters of administration or which has the mandate to revoke the same, not an appellate court in appeal as it was done in this case".***

From the above cited authority and law, and from the facts deposed by the Applicant in his affidavit, it is clear that **the Applicant wrongly pursued his prayer before this court.** It is the resident court of Dar es Salaam at Kisutu which is vested with power to deal with his complain. It was 2017 when the Applicant stated that he knew about the prior Probate cause which he claims that it was tainted with illegality and forgery. Therefore, he had a right to file a review or revision on the said Probate Cause. To bring his allegations in this court through the instant application, where from the facts it sounds like he is appealing and at the same time he wants this court to revoke and appoint him is wrong. It is the Resident Magistrate Court of Dar es Salaam at Kisutu which had the proper records of the

matter and the same court is vested with a power to entertain an application in relation to the Applicant's prayer.

From the above explanation and legal reasoning, I cannot hesitate to state that **the Application before the court has no merit and is misconceived.** That being the case, **the same is hereby dismissed in its entirety.**

I make no order as to costs.

It is so ordered.

Right of Appeal explained.



**L. E. MGONYA**  
**JUDGE**  
**18/10/2022**